IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

R.S.R.T.C. Jaipur & Anr. v. Shri Krishnalal & Anr.

S.B.CIVIL WRIT PETITION NO.663/1994
under Article 226 of the Constitution of India.

Date of Order : 24th October, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sangeet Lodha, for the petitioners.
Mr. K.S.Yadav, for the respondent.

BY THE COURT :

By this petition for writ a challenge is given to the award dated 29.1.1993 passed by Labour Court, Bikaner, Camp Sriganganagar in Industrial Dispute No.6/90, Krishanlal v. Divisional Manager, Rajasthan State Road Transport Corporation.

The appropriate Government by notification dated 25.1.1990 referred an industrial dispute for its adjudication to Labour Court, Bikaner in the terms as to whether termination of workman Krishanlal son of Trilok Chand, former daily rated Conductor by Divisional Manager, Rajasthan State Road Transport

Corporation w.e.f. 28.2.1986 is just and legal, if not then for what relief the workman is entitled?

The Labour Court after adjudicating the industrial dispute reached at the conclusion that the workman was guilty for misconduct i.e. of carrying five ticket less travelers though the fare was charged from them. The Labour Court despite of finding the workman guilty for misconduct alleged held that the penalty imposed was not proportionate to the delinquency proved. Accordingly the workman was declared entitled for reinstatement in service with 50% of total back wages.

Shri Sangeet Lodha, counsel for the Corporation while giving challenge to the award impugned urged that once the Labour Court found the workman guilty for misconduct which amount misappropriation of funds i.e. of carrying ticket less travelers though the fare was charged from them, there was no occasion for giving directions to reinstate him with 50% back wages. According to counsel for the petitioners in such cases the only punishment which can be imposed upon a delinquent employee is termination from services either by way of removal or by way of dismissal.

On the other hand, it is stated by counsel for the respondent workman that the Labour Court

modified the punishment of removal from service while exercising powers under Section 11-A of the Industrial Disputes Act, 1947 and the court was having sufficient powers to do so. It is further contended that the Labour Court after considering all the aspects of the matter on basis of the fact that no material loss was caused to the Corporation ordered for reinstatement of the petitioner in service. Beside the above it is also contended by counsel for the respondent workman that the Corporation at one point of time agreed to reinstate the workman in service in event of relinquishment of back wages by him. Counsel for the respondent workman has stated that even today the workman is ready to leave back wages to him by the award impugned.

Heard counsel for the parties.

It is the position admitted that the workman was found guilty for the misconduct of carrying five ticket less travelers in the bus of Corporation. It is also proved that the workman caused a loss to the funds of the Corporation. There is no dispute that where the allegation of misconduct pertaining to misappropriation of funds or embezzlement is proved then the punishment of removal from service or dismissal from service are the appropriate punishments. The quantum of amount misappropriated or embezzled is not a factor relevant for deciding the

punishment sought to be imposed. However, in the present case as it appears from reading of the award itself that the petitioner Corporation at one point of time agreed to reinstate the workman in service in event he relinquish the wages and at present the counsel for the workman has stated that the workman is ready to leave back wages awarded by the award impugned, I am of the view that the direction given by the Labour Court with regard to reinstatement of workman in service deserves to be allowed to be maintained without entering into the question of validity of the award impugned, specially looking to the fact that the workman has already been reinstated in compliance of the award.

Accordingly the award impugned dated 29.1.1993 is modified and it is ordered that the petitioner is entitled to be reinstated in service but he shall not be entitled for payment of back wages.

The petition for writ is disposed of accordingly.

(GOVIND MATHUR),J.

kkm/ps.